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No. 10

In the Supreme Court of the United States

OCTOBER TERM, 1938

THE UNITED STATES OF AMERICA, PETITIONER

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR No. 18-3306511, COMMERCIAL CREDIT COMPANY, CLAIMANT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 5–13) is reported in 19 F. Supp. 470. The opinion of the Circuit Court of Appeals (R. 26–28) is reported in 93 F. (2d) 771.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 4, 1938 (R. 29). The petition for writ of certiorari was filed February 25, 1938, and was granted April 4, 1938 (R. 31). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the claimant sufficiently complied with the provisions of Section 204 (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878, to entitle it to a remission of the forfeiture of an automobile seized and forfeited under the internal revenue laws.

STATUTE INVOLVED

Section 204 (a) and (b), Title II, of the Liquor Law Repeal and Enforcement Act of August 27, 1935, c. 740, 49 Stat. 872, 878 (U. S. C., Supp. III, Title 27, Sec. 40a), provides:

> (a) *Jurisdiction of court.*—Whenever, in any proceeding in court for the forfeiture, under the internal-revenue laws, of any vehicle or aircraft seized for a violation of the internal-revenue laws relating to liquors, such forfeiture is decreed, the court shall have exclusive jurisdiction to remit or mitigate the forfeiture.
>
> (b) *Conditions precedent to remission or mitigation.*—In any such proceeding the court shall not allow the claim of any claimant for remission or mitigation unless and until he proves (1) that he has an interest in such vehicle or aircraft, as owner or otherwise, which he acquired in good faith, (2) that he had at no time any knowledge or reason to believe that it was being or would be used in the violation of laws of the United States or of any State relating to liquor, and (3) if it appears that the interest asserted by

the claimant arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating laws of the United States or of any State relating to liquor has a right with respect to such vehicle or aircraft, that, before such claimant acquired his interest, or such other person acquired his right under such contract or agreement, whichever occurred later, the claimant, his officer or agent, was informed in answer to his inquiry, at the headquarters of the sheriff, chief of police, principal Federal internal-revenue officer engaged in the enforcement of the liquor laws, or other principal local or Federal law-enforcement officer of the locality in which such other person acquired his right under such contract or agreement, of the locality in which such other person then resided, and of each locality in which the claimant has made any other inquiry as to the character or financial standing of such other person, that such other person had no such record or reputation.

STATEMENT

The facts are not in dispute.

The automobile here involved was seized on December 3, 1936, by Federal officers from one Benjamin Guy Walker while it was being used by him in the unlawful transportation of distilled spirits upon which the tax had not been paid. He pleaded guilty to an indictment for such violation of the internal revenue laws in the United States District

Court for the Western District of South Carolina (R. 5).

A libel was filed in the above District Court for the forfeiture of the automobile under Section 3450, Revised Statutes (U. S. C., Title 26, Sec. 1441). The Commercial Credit Company, assignee of a conditional sales contract covering the automobile, intervened and made return to the libel, admitted the material allegations thereof, and prayed for a remission of the forfeiture under Section 204 of the Liquor Law Repeal and Enforcement Act (R. 2–4, 5). Trial was to the court (R. 5) and in its opinion (R. 5–7; see also R. 18 *et seq.*) it found the facts substantially as follows:

The automobile was sold by the Greenville Auto Sales, Inc., on October 3, 1936, through its agent, to Benjamin Guy Walker, who in part payment of the purchase price turned in a used car which had been paid for by him but which was registered in his wife's name. He was given terms for the payment of the purchase price under a conditional sales contract but the contract, which was drawn by an agent of the dealer, was made out in the name of and signed by his brother, Landrum P. Walker. Benjamin Walker and his wife had domestic difficulties at the time and the contract was drawn and executed in the name of his brother in order to place the title of the automobile "where his wife could not reach it." Landrum Walker had no interest in the transaction except to comply with the

request of his brother. The transaction was made by Benjamin Walker with the dealer through its agent. Benjamin Walker selected the car, made the agreement and handled the transaction himself. Landrum Walker drove the car away from the dealer's place of business. Benjamin Walker at the time, and for two or three weeks thereafter, was living at the home of his brother, Landrum Walker. Only one payment was made on the contract before the seizure and that was made by Benjamin Walker to the dealer.

It was admitted by all the parties that Benjamin Walker had a previous record and reputation for violating both state and Federal liquor laws. His brother, Landrum Walker, was convicted of violating the National Prohibition Act in 1929, but since then his record and reputation had been good.

On the date the sale was consummated the dealer submitted the contract to the claimant, the Commercial Credit Company, which accepted by telephone, and subsequently, on October 5, in the usual course of business, the dealer assigned the contract to the claimant and received a check for the same. Before accepting the assignment of the contract the claimant made an investigation of Landrum Walker by inquiring at the headquarters of the sheriff of Greenville County, South Carolina, and at the headquarters of the chief of police of the City of Greenville, the county and city where the interest was acquired and Landrum Walker re-

sided, as to his record and reputation for violating the liquor laws. The information received was that Landrum Walker had no such record or reputation, but that Benjamin Walker had both a record and reputation for violating state and Federal laws relating to liquor. No inquiry or investigation whatsoever was made as to Benjamin Walker, the admitted real owner and purchaser of the automobile.

The District Court ordered the car forfeited, but granted the claimant a remission of the forfeiture because of a recent decision by the Circuit Court of Appeals for its circuit in the case of *C. I. T. Corp.* v. *United States*, 89 F. (2d) 977 (R. 9–11). In that case it was held, under a state of facts similar to that in the instant case, that the three statutory conditions contained in Section 204 (b) of the Liquor Law Repeal and Enforcement Act had been complied with and that, while compliance with these conditions did not deprive a District Court of discretionary power to deny a remission, the facts involved did not furnish sufficient reason for a refusal to grant relief.

Upon appeal by the United States to the Circuit Court of Appeals for the Fourth Circuit the judgment of the District Court was affirmed (R. 29). The appellate court held that subsections (b) (1) and (2) of the statute had been complied with because the claimant had acquired its interest in the vehicle in good faith and had neither knowledge nor reason to believe that the vehicle would be il-

legally used, since there was nothing before the claimant to show that Landrum Walker was not the real purchaser (R. 27).[1] As to subsection (b) (3) it held that this provision of the statute had been complied with when the claimant investigated Landrum Walker, the fictitious or straw purchaser, because the statute did not require a lienor to ascertain at his peril the identity of every person having an interest in the property and to make inquiry of the designated law enforcement officers as to every such person's previous record or reputation, unless from the documents themselves or other surrounding circumstances the lienor possessed information which would lead a reasonably prudent and law-abiding person to make a further investigation (R. 28).[2] In conclusion, the court

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[1] In this connection the Circuit Court of Appeals also alluded to the fact that claimant had no knowledge that Landrum Walker, the nominal purchaser, "seven years before [the purchase of the car] had violated the National Prohibition Act" (R. 27). We make no point of Landrum Walker's conviction of violating the National Prohibition Act because of the length of time which had elapsed between the conviction and the purchase of the car, because there is nothing in the record to indicate that he was a persistent violator of the liquor laws or that he was convicted more than once, and because the inquiry made by the claimant of the local law enforcement officers did not disclose that Landrum Walker had a record or reputation for violating the liquor laws.

[2] The Circuit Court of Appeals also held that there was no merit in the contention made by the Government in that court that subsection (b) (3) of the statute was not complied with because inquiry was made by the claimant only

held that the case did not present any facts which would have justified the District Court, in the exercise of discretion, in refusing a remission of the forfeiture (R. 28).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the claimant had no reason to believe that the automobile would be illegally used, as that language is employed in subsection (b) (2) of the statute.

(2) In holding that subsection (b) (3) had been sufficiently complied with by the claimant's investigation of the fictitious or straw purchaser.

(3) In holding that the claimant was not required under subsection (b) (3) to investigate the real purchaser.

(4) In failing to hold that it was incumbent upon the claimant to make a reasonable effort to ascertain the identity of the real purchaser so that his previous record and reputation could be investigated in accordance with subsection (b) (3).

(5) In not reversing the judgment of the District Court.

SUMMARY OF ARGUMENT

The forfeiture should not have been remitted in this case, because the conditions prescribed by the

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of the local enforcement officers and not of the Federal officers. We do not urge this contention in this Court since we are in accord with the view of the Circuit Court of Appeals that the statute is satisfied if inquiry is made of any of the officers named therein (See *United States* v. *One 1935 Dodge Rack-Body Truck, etc.*, 88 F. (2d) 613 (C. C. A. 2d).

statute which must be complied with before the court has jurisdiction to remit a forfeiture were not met by the claimant. One of these conditions is that the claimant must prove that it had no "reason to believe" that the car on which it was about to acquire a lien would be illegally used. Claimant investigated the reputation of the fictitious purchaser, but it made no effort to ascertain whether he was the actual purchaser and user of the car or whether some one else had an interest in the transaction. With knowledge that automobiles are frequently used in violating the liquor laws the claimant should not be heard to say that it had no reason to believe, within the meaning of the statute, that the car would be so used, when it neglected to use ordinary diligence in discovering the true facts surrounding the purchase.

The claimant's interest arose out of a contract between a dealer and a bootlegger. While the contract was signed by a nominal purchaser, the real party in interest and the person having the right to the vehicle was the bootlegger. In such a case the statute specifically provides that the person having a right to the vehicle shall be investigated. Even, however, if the fictitious character of the transaction be disregarded and the claimant's interest may be considered as having arisen out of the contract between the dealer and the person whose name was appended to the conditional sales contract as purchaser, the claimant was required to investigate the real purchaser, since its interest was "subject to [an] agreement" whereby a person

having a reputation as a liquor law violator had a right with respect to the vehicle. Claimant investigated only the nominal purchaser. We submit that under the language of the statute the claimant is required to investigate the real purchaser at its peril and that if it fails to do so, as between it and the Government, the claimant assumes the risk of fraud perpetrated upon it by the dealer and the bootlegger.

In any event, the claimant should have been required to show that it at least made a reasonable effort to ascertain who the real purchaser and user of the car was so that he could be investigated as required by the statute. Otherwise, the revenue laws will be easily evaded by straw purchaser transactions such as this, and it was not the intent of the remission statute to enlarge the opportunities to defraud the revenue.

Since the prerequisites of the statute were not complied with, there was no room for the exercise of discretion as to the remission of the forfeiture in this case, with the result that the judgment of the court below should be reversed.

ARGUMENT

I

THE COURT ERRED IN HOLDING THAT CONDITION (2) OF THE STATUTE HAD BEEN COMPLIED WITH ON THE GROUND THAT THE CLAIMANT HAD NO REASON TO BELIEVE THAT THE CAR WOULD BE ILLEGALLY USED

Section 204 (a) gives the District Court exclusive jurisdiction to remit or mitigate the forfeiture

of an automobile where a forfeiture is decreed under the internal revenue laws. Section 204 (b) expressly provides, however, that the court is not permitted to allow a claim for remission or mitigation of the forfeiture unless the claimant proves,

(1) That he has an interest in the vehicle which he acquired in good faith;

(2) That he had at no time any knowledge or reason to believe that the vehicle was or would be used in violating the liquor laws; and

(3) If it appears that the claimant's interest "arises out of or is in any way subject to any contract or agreement" under which any person having a record or reputation for violating state or Federal liquor laws has a right with respect to the vehicle, then the claimant must also show that, before he acquired his interest in the vehicle, he made inquiries of certain designated state or Federal law enforcement officers with respect to the aforesaid person's record or reputation for violating the liquor laws and was informed that he had no such record or reputation.

It is conceded that condition (1) was complied with because the claimant had an interest in the vehicle and because it acquired such interest in good faith, in that it was not a party to the transaction between the dealer's agent and the bootlegger. *Arguendo,* it may also be admitted with respect to condition (2) that the claimant had no "knowledge" that the vehicle would be illegally used.

The court, however, went furt and held that condition (2) was fully complied with because the claimant also had no "reason to believe" that the car would be so used, since there was nothing before the claimant to show that Landrum Walker, the fictitious purchaser, was not the real purchaser of the car. In so holding we think the court gave too narrow a construction to the statute. "Reason to believe" is not synonymous with "suspicion," as would seem to be the view of the court below (R. 27). The claimant may have had no reason to believe the existence of the true facts either because nothing came to its notice or because it was satisfied with a limited inquiry, but this, we submit, does not satisfy the statute. The claimant could not close its eyes to an obvious risk and then claim that it had no reason to believe that there was such a risk. Persons dealing in automobiles and in automobile finance paper do so with full knowledge that automobiles are frequently used in violating the law. They are chargeable with knowledge that the courts have uniformly held that automobiles are especially adapted to violating the liquor laws. In *Goldsmith-Grant Co.* v. *United States,* 254 U. S. 505, 513, it was said:

> If we should regard simply the adaptability of a particular form of property to an illegal purpose, we should have to ascribe facility to an automobile as an aid to the violation of the law. It is a "thing" that

can be used in the removal of "goods and commodities" and the law is explicit in its condemnation of such things.

The greatest risk of persons having an interest in automobile finance paper is the danger of seizure of the automobile for violation of such laws. Claimant must have known from experience that the very device by which it was deceived in this case is frequently employed by bootleggers in purchasing automobiles. Yet in the light of this knowledge and this experience it was satisfied to rely on the information in the documents before it and on the limited investigation made of the fictitious purchaser. It made no effort to ascertain what the true facts surrounding the transaction were. Persons injured by negligently handling loaded guns often have no reason to believe that they will explode simply because they have not examined them. There is very little doubt that the claimant could have ascertained the true facts, and it is certain that it made no effort to find out who the real owner was or whether the interest it was about to buy arose out of or was in any way subject to a contract or agreement under which a reputed liquor violator had a right with respect to the vehicle. It could readily have inquired of Landrum Walker, whose paper it had before it, whether some one else was interested in the transaction, and it could have inquired of the vendor, with whom it dealt and from whom it acquired the conditional sales con-

tract, whether the person signing the contract was the real purchaser and user of the car. If either or both of these inquiries had been made the claimant would doubtless have discovered that the automobile in which it was about to buy a substantial interest was not being acquired and used by Landrum Walker, the supposed owner, but by Benjamin Walker, the true owner and a violator of both Federal and state liquor laws. The claimant was able to remain in its favored state of ignorance only because it refrained from seeking knowledge.

We submit that a claimant may not be heard to say that it had no reason to believe a thing, within the meaning of the statute, when it has neglected to use ordinary diligence to discover the true facts bearing on a situation or transaction, and, therefore, that the holding of the court below that this part of the statute had been sufficiently complied with was erroneous.

Respondent refers in its memorandum in opposition to certiorari to the burden which would be imposed upon automobile finance companies, in view of the magnitude of their transactions, if the Government's contention were sustained. While it is true that the burden may be a heavy one, the finance company is in the position of seeking, in effect, a retransfer to it of property the title to which has been forfeited to the Government for a violation of law. A finance company may, of course, choose to rely either upon no investigation

or a casual investigation of those purchasers of cars whose paper it assumes, but when it comes into court and seeks the return, under a remission statute, of property which has theretofore been forfeited to the Government, it should not be heard to say that a condition to the remission of forfeiture has been fulfilled where its investigation has been so casual and limited that it is not in a position to entertain a belief that the car would or would not be used in violating the liquor laws.

II

THE COURT ERRED IN FAILING TO HOLD THAT UNDER CONDITION (3) OF THE STATUTE THE CLAIMANT WAS REQUIRED TO INVESTIGATE THE REAL PURCHASER AT ITS PERIL

Subsection (b) (3) provides that if it appears that the claimant's interest arises out of or is in any way subject to any contract or agreement under which any person having a record or reputation for violating Federal or state liquor laws has a right to the vehicle, then the claimant is required to show, in order to be entitled to a remission of the forfeiture, that before it acquired such interest it made certain inquiries of the law enforcement agencies designated in the statute and was informed that the aforesaid person had no such record or reputation.

The court below held that the claimant was not required to investigate the real purchaser and user of the car because there was nothing before the

claimant to show that Landrum Walker, the fictitious or straw purchaser, was not the real owner of the car. The statute specifically provides, however, that where the interest of the claimant "arises out of" a contract or agreement under which any person having a record or reputation for violating the liquor laws has a "right with respect to [the] vehicle," such person shall be investigated. While it is true that the written contract in this case purported on its face to be between the dealer and a person without a reputation as a liquor law violator, the claimant's interest, in reality, arose out of a contract between the dealer and a bootlegger. The bootlegger was the real purchaser under the contract and the only person who, in fact, had a right to the vehicle. He, himself, handled the transaction with the dealer's agent, selected the car and made the agreement for its purchase. He turned in a used car in part payment and made the only cash payment on the vehicle that was made. The nominal purchaser had no real right to the vehicle or interest in the transaction whatsoever. He simply signed the conditional sales contract at the request of the real purchaser of the car. In such a case the fictitious transaction should, we submit, be disregarded and the case decided on the basis of the true facts. See *Federal Motor Finance* v. *United States,* 88 F. (2d) 90, 93 (C. C. A. 8th), where the court quoted the following language from the decision in *United States* v. *One 1935 Chevrolet Coupe,* 13 F. Supp. 986, 988 (Me.):

> The pivotal feature of this case is the fact that the signer of the contract was a straw man, the actual purchaser being a well-known violator of the liquor laws who intended to use the car (as he did) in his illicit business, and that this was known to the dealer who sold the car to the bootlegger and the contract to the finance company.
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> * * * * *
>
> When it develops, after a seizure and forfeiture such as this, that the sale was actually made to the lawbreaker who caused the forfeiture, and not to the person whose name appears in the contract, the court will disregard the fiction and decide the case on the basis of the true facts.

In its memorandum in opposition to the petition for certiorari the claimant contended that the contract referred to in the statute is the contract signed by Landrum Walker, the nominal purchaser; that this was the contract assumed by the claimant and out of which its interest arose, and that the nominal purchaser, whose name appeared in the contract, was the only one to be investigated. But even such a technical attempt at construction, which disregards the fictitious nature of the transaction, does not avail the claimant. The further question remains whether the claimant's interest "is *in any way subject to* any contract or agreement under which any person having a record or reputation" for violating the liquor laws "has a right with respect to [the] vehicle." [Italics ours.] Here the facts clearly show that the claimant's interest

was "subject to [an] agreement" whereby Benjamin Walker, the bootlegger, had "a right with respect to the vehicle." All of the parties to the transaction, the dealer's agent, the bootlegger, and his brother, recognized and understood that the brother's name was appended to the contract merely as an accommodation to the bootlegger and that the bootlegger was the real purchaser of the car and the one who would use and pay for it. It is therefore evident that even under the respondent's theory it was required, in order to meet the terms of the statute, to investigate the record or reputation of Benjamin Walker, the real purchaser of the car.

There is nothing in the statute which relieves the claimant from the investigation there commanded merely because the claimant may not know of the straw nature of the transaction. The statute contemplates, in a situation such as is here presented, the investigation of the real party in interest. Such an investigation is a condition precedent to the retransfer to the claimant of property which has been forfeited to the Government. The statute is not at all concerned with the manner in which the claimant shall ascertain the identity of the real party in interest in straw purchaser transactions, but merely with the fact that the claimant shall have investigated the record or reputation of such party for violating the liquor laws before it may obtain the return of the forfeited property.

To hold, as did the court below, that the claimant

was required to investigate only the fictitious purchaser would lead to easy evasion of the statute and the internal revenue laws. An investigation of the fictitious purchaser seldom, if ever, discloses anything against him. This was true in the instant case. The very purpose of straw purchaser transactions usually is to avoid an investigation of the real parties in interest. Bootleggers and dealers are cautious to use the names of fictitious persons or straw men with good reputations who will bear investigating, in order to avoid the difficulty of securing the financing of cars purchased on the installment plan.

While the purpose of the statute was to relieve against hardship in certain cases, its proper construction involves not alone the interest of the lienor but the broad interest of the Government in its effort to collect the revenue and to break up the illicit liquor traffic. We submit that under the language of the statute the claimant is required to investigate the real purchaser at its peril and that, if it fails to do so, the claimant, as between it and the Government, assumes the risk of fraud perpetrated upon it by the dealer and the bootlegger.

Although the court below refused to follow the construction of the statute just urged, it admitted that such an interpretation was a possible one and also, by inference, that it was supported by the decision of the Circuit Court of Appeals for the Eighth Circuit in *Federal Motor Finance* v. *United States*, 88 F. (2d) 90, *supra* (R. 28).

The facts in the *Federal Motor Finance* case are strikingly similar to those in the instant case. A car was sold by an agent of a dealer to one Tayson, a bootlegger. The note and conditional sales contract were executed for the accommodation of the bootlegger in the name of one Canfield, who bore a good reputation, and were assumed by the finance company without knowledge of the fraud. The company investigated Canfield, but it did not investigate Tayson because it had no information that he was the purchaser. It made no inquiry as to whether any person other than Canfield was interested in the transaction. The District Court for the Southern District of Iowa denied remission of the forfeiture (13 F. Supp. 619). On appeal the appellant finance company contended that the trial court erred in holding that Tayson was the real purchaser of the car and in concluding that the claimant's interest arose out of or was subject to a contract or agreement with him. It claimed that the law violator Tayson acquired no rights to the car under the contract, and that the statute does not require a claimant to make inquiry of enforcement officers concerning the reputation of a person unless the claimant knows or should have known that such person had some right to or interest in the car. In affirming the order of the District Court, the Circuit Court of Appeals (p. 93) quoted the language from the opinion of Judge Peters in *United States* v. *One 1935 Chevrolet Coupe*, which we have al-

ready quoted (*supra*, pp. 16–17), and then continued (88 F. (2d) at pp. 93–94):

> The true facts in this case are that the confiscated car was sold and delivered by the agent of Harter Motors, Inc., to the liquor law violator Tayson and the defrauding of the revenue laws followed. The liquor law violator, and not the straw man, Canfield, acquired the car. The lien of the appellant is good because Tayson is estopped to deny its validity and not because Canfield ever had any claim upon the car in fact or in law.
>
> On study of the wording of subdivision (b) (3) of 27 U. S. C. A. sec. 40a, we do not agree with the contention of the appellant that the intent of Congress was to relieve the finance company from all inquiry as to the true ownership of the car at the time it acquired its lien thereon, or to save such an interest as the finance company acquired from confiscation under the facts shown. We think the fair intendment of the language of subsection (3) concerning remission of forfeiture is that the appellant could not rely entirely upon a course of business whereby it acquired an interest in the car so nearly approximating the total value thereof without taking care to ascertain who the real owner was in possession of and using the car. We agree with the statement by Judge Peters:
>
> "I see no evidence of any intention on the part of Congress to enlarge the number of opportunities for defrauding the revenue.

> Quite the contrary. To mitigate the result of this forfeiture would be to inform dealers that by using straw men on contracts dealers can safely sell cars to bootleggers and avoid subsequent forfeiture by turning over the contracts to innocent third parties. That is an avenue for fraud that should not be opened. The finance companies can easily take precautions against fictitious sales, and the few dealers who would be inclined to such practices will be checked."

Similarly, Judge Peters, in denying a remission of forfeiture in another straw purchaser case (*United States* v. *One 1935 Ford Coupe,* 17 F. Supp. 331), said (p. 333):

> Certainly to remit the forfeiture in this case would not only ratify a scheme to defraud the government, but would furnish proposed violators of the law with a simple formula for easily obtaining one of the instrumentalities of their trade.

III

THE COURT ERRED IN FAILING TO HOLD THAT THE CLAIMANT WAS IN ANY EVENT REQUIRED TO MAKE A REASONABLE EFFORT TO ASCERTAIN THE IDENTITY OF THE REAL PURCHASER SO THAT HE COULD BE INVESTIGATED AS REQUIRED BY SUBSECTION (B) (3)

If it be thought that the construction above contended for, that the claimant is required to investigate the real purchaser at its peril, places too strict a construction upon the statute and too great a

burden upon the claimant where a straw purchaser transaction is involved, then we submit that the claimant, before it can assert compliance with the statute, should at least be required to make a reasonable effort to ascertain the identity of the real purchaser, so that he may be investigated as contemplated by the statute.

The remission statute was not intended to enlarge the opportunities to defraud the revenue. Except for the statute in question the claimant would have no standing in court. For many years innocent interests forfeited under the internal revenue laws were not saved. *Goldsmith-Grant Co.* v. *United States,* 254 U. S. 505, and *United States* v. *One Ford Coupe,* 272 U. S. 321, 325. The Secretary of the Treasury had discretionary power to remit forfeitures in such cases under certain conditions (U. S. C., Title 26, Sec. 1626; Title 19, Sec. 1618) and later the Attorney General was given the same power under Section 5 of Executive Order No. 6166 (U. S. C., Title 5, Sec. 132) in cases referred to him for prosecution. But it was not until the enactment of the present statute in 1935 that the court was given jurisdiction to remit forfeitures under the internal revenue laws, and then only when certain conditions set forth in the statute were complied with. Its jurisdiction was limited and circumscribed. The history, purpose, and effect of the statute are fully discussed in an opin-

ion by Judge Paul, of the United States District Court for the Western District of Virginia, in *United States* v. *One Ford Coach,* 20 F. Supp. 44. The opinion also refers to the growing practice of bootleggers and dealers using straw purchasers to defeat the revenue laws. It, moreover, points out that even though the claimant has complied with all the conditions of the statute, it is not entitled to a remission of the forfeiture unless it convinces the court that, in the exercise of its discretion, it should under all the circumstances be granted relief. While there is authority to the contrary (*Universal Credit Co.* v. *United States,* 91 F. (2d) 388, 390 (C. C. A. 6th)), this interpretation of the statute, which seems to us to be the correct one, is supported by the decision of the court below in the instant case (R. 28) and in *C. I. T. Corp.* v. *United States, supra,* and by the decision of the Circuit Court of Appeals for the Second Circuit in *United States* v. *One 1935 Dodge Rack Body Truck,* 88 F. (2d) 613, *supra.* In the latter case it was said (p. 615):

> Although the statute under which this claim was made does not in terms require the court to remit or mitigate the forfeitures, it does give exclusive jurisdiction to do so, making the exercise of such jurisdiction subject to certain conditions precedent. While even if such conditions are fulfilled a claimant does not have the absolute right to remission or mitigation, he does have the right then to invoke the exercise of the court's dis-

> cretion. That discretion is a judicial one as distinguished from action merely arbitrary and capricious and so it is subject to review if, though only if, it has been abused.

As it is apparent that the statute was designed to protect only those claimants whose innocence is beyond doubt, we submit that before a claimant is entitled to assert that it has complied with the conditions of the statute it should be required to take reasonable precautions to prevent frauds upon the revenue. This could readily have been done in the instant case by the claimant inquiring of the fictitious purchaser and the dealer, both of whom were known to it, whether Landrum Walker was the real purchaser and user of the car. Particularly was this true with respect to the dealer, since it was from him that the claimant purchased its interest. These were reasonable precautions, and if followed the claimant would doubtlessly have been informed that the real purchaser was a bootlegger and it would have refrained from financing a car which was likely to be used in violating the law. It chose, however, not to take this precaution but to rely entirely upon an investigation based solely upon information contained in the documents before it. The court below has approved such a course of conduct by the claimant as a sufficient compliance with the statute. We submit, however, for the reason stated in the *Federal Motor Finance* case and the other cases to

which we have referred, that the effect of such a construction would be to open up an avenue for fraud upon the revenue which would defeat the aims of the statute.

While it is true that the court below interpreted the *Federal Motor Finance* decision as definitely holding that a claimant is required under the statute to ascertain at his peril the identity of the real owner of the vehicle (R. 28), that decision may be susceptible of the interpretation that what the court was intending to hold was merely that the claimant should take reasonable precautions to ascertain who the real owner is, so that the investigation contemplated by the statute might be made. In any event, such a construction of the statute is supported by the reasoning of the decision, regardless of which of the two interpretations thereof is the correct one.

The power given under the remission statute should, of course, be reasonably exercised so as to relieve entirely innocent claimants and owners against harsh condemnations of their property, but it should not be so loosely exercised as to give encouragement to violators of the revenue laws. To relieve against forfeitures in cases such as this would give automobile dealers an opportunity to cooperate with their bootlegging customers in the evasion of the forfeiture statute, so long as they transferred the lien on the

car to a finance company. The finance company would run no risk, and the plan would be crowned with success, so long as the company was not required to seek knowledge of the true facts surrounding the purchase.

As pointed out in cases heretofore cited, finance companies are not in an entirely helpless position. They may take precautions against fictitious sales by accepting contracts with recourse against the dealer or upon such other terms as they may fix for their protection, or they may possibly recoup their loss by actions in the nature of deceit.

In its memorandum in opposition to the petition for certiorari the claimant argued that the court below rightly approved the exercise of judicial discretion by the District Court and since, as that court held, there was no abuse of discretion, the decision should not be disturbed. We submit, however, that there was no room for the exercise of discretion in this case, because the conditions prescribed by the statute which must be complied with before the court has jurisdiction to exercise any discretion had not been met by the claimant. That these conditions must first be met is clearly pointed out in *United States* v. *One 1935 Dodge Rack-Body Truck, supra,* p. 24, and other cases. The decisions in the *Federal Motor Finance* case, *supra,* as the opinions therein clearly disclose, were based on the

ground that no power to remit existed under the statute in the similar circumstances there presented; and that therefore there was no room for the exercise of discretion on the part of the District Court. The District Court in that case did not purport to exercise discretion in denying remission. It concluded (13 F. Supp. 620):

> (5) That the court cannot allow the claim of the intervener, as it has failed to show the conditions precedent to remission or mitigation of a decree of forfeiture under the provisions of the Act of August 27, 1935, sec. 204, being section 40a, tit. 27, U. S. Code (27 U. S. C. A. sec. 40a).

The affirmance by the Circuit Court of Appeals in that case was similarly, and necessarily, predicated on the view that the District Court was without power to exercise discretion in determining whether the claimant there was entitled to remission of forfeiture.*

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* While several District Courts, in denying remissions of forfeitures in straw purchaser cases, have rested their decisions upon the discretionary power of the court (*United States* v. *One 1935 Chevrolet Coupe*, *supra*; *United States* v. *One 1935 Ford Coupe*, *supra*; *United States* v. *One Ford Coach*, *supra*), we think that, under the facts in those cases, it should have been held that the conditions of the statute had not been complied with and that there was, therefore, no room for the exercise of discretion. In resting their decisions on a discretionary basis the courts in those cases found it unnecessary to give detailed consideration to the construction of the specific conditions of the statute which, we submit, must be complied with before it can be determined whether or not a remission shall be granted.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the Circuit Court of Appeals should be reversed.

ROBERT H. JACKSON,
Solicitor General.
BRIEN MCMAHON,
Assistant Attorney General.
MAHLON D. KIEFER,
W. MARVIN SMITH,
Attorneys.

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